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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/628,479	07/31/2000	Adam Their	11553-018001	5538
28863	7590	09/10/2004	EXAMINER	
SHUMAKER & SIEFFERT, P. A. 8425 SEASONS PARKWAY SUITE 105 ST. PAUL, MN 55125			PATEL, JAGDISH	
		ART UNIT	PAPER NUMBER	
		3624		

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/628,479	THEIR ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JAGDISH PATEL	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 May 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3-6,8-13,15,16 and 18-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1,3-6,8-13,15,16,18 and 19 is/are allowed.
- 6) Claim(s) 20-33 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 18; 3/26/04.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This communication is in response to amendment filed 5/25/04, which was filed in reference to prior office action dated 3/1/04.

***Response to Amendment***

2. Claims 1, 3-4, 8-10, 13, 15, 31 and 33 have been amended and claim 2,7,14 and 17 has been canceled per request.

***Response to Arguments***

3. Regarding prior 101 rejections, Applicant's arguments with respect to amended independent claims 1, 10, 15 and dependent claims therefrom are persuasive. Accordingly, 35 USC 101 rejection of claims 1, 3-6, 8-13, 15-16 and 18-19 have been withdrawn. However, applicant's arguments regarding claims 20-30 are not persuasive and accordingly rejection of these claims is maintained. (see detailed explanation provided below).

4. Regarding prior 112 rejections, Applicant's arguments with respect to amended independent claims 2, 8-14 are deemed persuasive. Accordingly, rejection under 35 USC 112 (second) have been withdrawn.

5. In response to the amendment, and applicant's remarks rejection of claims 1-3, 4-7, 10-12 under 35 USC 102 have

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been withdrawn. It is noted that the applicant's remarks concerning amended claims 1 and 10 addresses limitations which are not present in the amended claims 31-33. For example, on p. 13 the applicant argues that "As indicated by the Examiner, neither Wainscott nor any other prior art of record teaches or suggests each and every limitation set forth in many of the currently pending claims, including independent claim 15. For example Wainscott fails to teach or suggest selectively presenting with the computer the forecast data and the target data to a subset of the contributors for reconciliation based on a current level of the model, receiving review information with the computer from the subset of the contributors selected based on current level, updating the current level with the computer according to review information.". Subsequently, the applicant states that claims 1, 10 and 31 have amended to include limitations not found in the prior art of record.

6. However, the aforementioned features included in the independent claims 1, 10 and 15 which have been considered novel have not been included in amended claims 30-32. The applicant has not provided any explanation how the amended claims 30-32 avoids the prior art rejection under Wainscott. Therefore, claims 30-32 stand rejected over

Wainscott as explained below. (see claim rejection under 102 (b)).

***Claim Rejections - 35 USC § 101***

7. Claims 20-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**Claims 20-30 recite Non-functional Data Structure**

8. Claims 20-30 are rejected under 35 USC § 101 because the claimed inventions are directed to non-statutory subject matter. Claims 20-30 are directed to disembodied data structure which are per se are not statuary (*In re Warmerdam*, No. 93-1294 (Fed. Cir. August 11, 1994)).

Note that functional descriptive material consists of data structure and computer programs which impart functionality when employed as a computer component. Nonfunctional descriptive material includes but is not limited to music, literary works and a compilation or mere arrangement of data.

In the present case, the claimed data structure is mere arrangement of data without any associated functionality. The applicant argues that data structures are "to store data" that defines an organizational model. However, the intended use of the data structure does not impart functionality to the data

structure where the data structure is mere arrangement of data. The data structures merely store data which are non functional since without any association with programmed code executable by a processor their functionality cannot be realized.

Quoting MPEP section 2106. IV. B. 1.

"When nonfunctional descriptive material is recorded on some computer-readable medium, it is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material stored in a computer-readable medium does not make it statutory. Such a result would exalt form over substance. *In re Sarkar*, 588 F.2d 1330, 1333, 200 USPQ 132, 137 (CCPA 1978) ("[E]ach invention must be evaluated as claimed; yet semantogenic considerations preclude a determination based solely on words appearing in the claims. In the final analysis under 101, the claimed invention, as a whole, must be evaluated for what it is.") (quoted with approval in *Abele*, 684 F.2d at 907, 214 USPQ at 687). See also *In re Johnson*, 589 F.2d 1070, 1077, 200 USPQ 199, 206 (CCPA 1978) ("form of the claim is often an exercise in drafting"). Thus, nonstatutory music is not a computer component and it does not become statutory by merely recording it on a compact disk."

The applicant's argument that the data structure of the computer readable medium "stores data that defines organizational model that controls a network-based budget planning system for reconciliation of target data and forecast data for an organization" is not persuasive because the data structures themselves are passive and cannot perform any function. Only when the Data structures are used or accessed in conjunction with programmed computer instructions codes to realize the underlying functionality. In the instant case, the data structure is mere arrangement of storing data pertaining to an organizational model which is intended to perform the aforementioned functionality, however, the functionality itself as asserted by the applicant is not positively recited.

Accordingly, rejections of claims 20-30 under 35 USC § 101 is maintained.

***Claim Rejections - 35 USC § 102***

9. Claims 31-33 are rejected under 35 U.S.C. 102((b) as being anticipated by Wainscott.

Claim 31: Wainscott teaches a system for generating a budget report which incorporates the claimed means for storing definition of hierarchical model of an organization (see Fig. 8 and 9 which depict organizational hierarchy); means for receiving forecast data (p.4 L 9+ population of initial working

budget and updated forecast), and receiving target data (p. 12 part of budget modification) and means for generating an electronic budget based on the reconciling the forecast data and the target data (p. 12 part of budget modification phase 36) and generating a budget report based on the reconciled forecast data (p. 12 ..Reports are generated and the finalized budget is uploaded..)

Claim 32: Wainscott furthermore teaches means for capturing the organizational target data and the forecast data (refer to p. 12 ..initial budget is sent to managers for updates reflecting their business needs and goals, this feature inherently teaches that capturing of the forecast data is performed according to a multi-level organizational model (Wainscott teaches that the set of contributors are part of the hierarchical organizational model as depicted in Figure 8 and explained in P. 21).

Claim 33: Wainscott furthermore teaches ;  
means for receiving review input (see p. 42 budget modification process 104);  
means for propagating the forecast data up and down the organization in accordance with the hierarchical model based on the review input (see description of Fig. 13, budget modification phase 104 at pp. 41-44).

***Allowable Subject Matter***

10. Claims 1,3-6, 8-13, 15,16, 18 and 19 are allowed.

Claims 1,3-6, 8-9 are allowed because prior art fails to teach or suggest:

Executing software on the server to perform a reconciliation process to reconcile target data and forecast data in accordance with an organizational model at least by automatically updating the current level based upon the review information and receiving updated forecast data based on the updated current level when at least one of a selected contributors rejects the forecast data.

Claims 10-13 are allowed because prior art fails to teach or suggest a budgeting system comprising:

A server selectively presents forecast data captured from a set of contributors and target data from a set of analysts to a subset of contributors with a current level of a multi-level model of an organization having a plurality of hierarchically arranged node each node corresponding to at least one of the contributors, increments the current level when all of the contributors associated with nodes of the current level accept the forecast data and decrements the current level when at least

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one of the contributors associated with nodes of the current level rejects the forecast data.

Claims 15,16,18-19 are allowed because prior art fails to teach or suggest a method for generating a budget comprising:

Selectively presenting forecast data captured from a contributor associated with a node within a lower level of a model of an organization having a plurality of nodes hierarchically arranged into a number of levels and target data from a set of analysts to a subset of the contributors for reconciliation based on a current level of the model, receiving review information from the subset of the contributors selected based on the current level and updating the current level according to the review information.

***conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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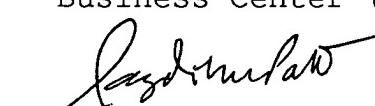
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (703)308-7837. The examiner can normally be reached on 800AM-600PM M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703)308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jagdish N. Patel

(Primary Examiner, AU 3624)

9/7/04